DOCKET FILE COPY ORIGINAL ORIGINAL

BEFORE THE

Federal Communications Commission

WASHINGTON, D.C.

RECEIVED

FEB 9 1994

FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF SECRETARY

In re:	)	
	)	
Review and Revision of Rules Covering Radio Station Ownership Opportunities	)	RM-8414

TO: The Commission

COMMENTS ON PETITION FOR RULEMAKING

Duke Radio Broadcasting, Inc., the licensee of Stations KBTM(AM) and KJBR(FM), Jonesboro, Arkansas, and Duke Broadcasting Corporation, the licensee of Station KFIN(FM), Jonesboro, Arkansas (collectively "Duke"), hereby submit their comments on the Petition for Rulemaking ("Petition") filed by the National Association of Broadcasters ("NAB") on August 23, 1993.[1/]

1. The NAB Petition requests the Commission to formulate a set of modest rule and/or policy changes to the local radio multiple ownership limits set forth in the Commission's Memorandum Opinion and Order and Further Notice of Proposed Rule Making ("MO&O") in MM Docket No. 91-140, 7 FCC Rcd 6387 (1992). As the Petition demonstrates, there are problematic areas in the implementation of these rules that require the Commission's careful consideration and attention. In particular, the NAB points out that under the numerical and share caps on local broadcast ownership, certain classes of broadcasters are

1/ The Petition was listed on an FCC Public Notice, Report No. 1996, released January 11, 1994.

No. of Copies rec'd 0+14
List A B C D E

completely constrained from enjoying consolidation opportunities that would enhance their ability to operate more effectively and serve their local radio markets.

> Also, station operators in what are considered small markets for all other purposes often are thrust into a larger market compliance analysis by virtue of the contour method of market classification. These broadcasters are thus not subject to the 50 percent of market stations limit but instead are placed under the often more limiting 25 percent audience share cap on local ownership....
>
> Thus, a broadcaster in a 'smaller market' who wishes to purchase another station may find himself or herself classified as a larger market broadcaster by the Commission and thus required to meet the 25 percent of the audience share. Yet, the station is truly only competing in that smaller market. (Petition at pp. 5 and 6).

2. Duke has encountered precisely the problems that the NAB points out. Jonesboro, Arkansas, in which Duke's station KFIN(FM) is located, has a population of just over 45,000. It is neither an Arbitron metro market nor a metropolitan statistical area, and it is ranked as the 176th television market. Yet when Duke sought to acquire an AM/FM combination in Jonesboro in 1993, Duke suddenly found that Jonesboro, Arkansas was considered a larger market (one with 15 or more stations) under the Commission's rules and thus subject to the requirement that its aggregate audience share not exceed 25 percent.

3. In terms of demonstrating audience share, Duke found that its situation was anomalous and certainly was not envisioned by the Commission when it revised the multiple ownership rules.

Specifically, the contour of the FM station to be acquired, KJBR, completely encompassed the contours of KBTM(AM) and KFIN(FM). Therefore, for purposes of reaching an audience share figure, Duke was limited to the ten counties covered by the KJBR-FM contour and its audience share exceeded the 25% figure. For this reason, the Commission imposed a temporary waiver of the multiple ownership rules requiring Duke to file an application to assign the license of either its original station, KFIN(FM), or the newly acquired station, KJBR-FM, within one year. Patteson Brothers, Inc., FCC 93-472, released October 25, 1993.

4. Duke's situation illustrates that the effect of the Commission's rules is to unduly restrict the expansion of stations in certain smaller markets while other comparable stations face no restrictions. Duke has been effectively restricted to owning one FM station and possibly only one AM station. The existing rules operate to restrict stations whose contours are coterminous from expanding while stations whose contours are not coterminous can expand without reaching the audience share cap. This is because where the contours of proposed co-owned stations are not coterminous, those contours "hit" portions of additional counties, thereby permitting the entire populations of such counties to be factored into the weighing formula, and resulting in a lower aggregate audience share.

5. An example of just how unfairly the Commission's rules can operate is readily available. In 1992, Associated Communications Corporation, parent of the licensee of stations

WSTV(AM) and WRKY(FM), Steubenville, Ohio, set up a second wholly-owned subsidiary, Associated WOMP, Inc., to acquire Stations WOMP(AM) and WOMP-FM, licensed to Bellaire, Ohio. Steubenville has a population of approximately 26,000 and Bellaire has a population of approximately 8,000; thus, their combined population is less than that of Jonesboro, Arkansas.

6. The markets created by the various principal community contour overlaps of the Steubenville and Bellaire stations are each served by fifteen or more commercial radio stations, and consequently, Associated had to demonstrate that its proposed acquisition complied with the 25% audience share limit. The contours of the stations involved covered the Steubenville-Weirton metro market and the Wheeling metro market. Arbitron ranks both of these metro markets. (Steubenville-Weirton is ranked 211 and Wheeling is ranked 197.) In the face of a petition to deny which alleged that the four stations had an audience share of 28.6% in Steubenville-Weirton and an audience share of 16.8% in Wheeling, the Commission's staff granted Associated's application to acquire the Bellaire, Ohio stations. According to the staff, 41.2% of the overlap area was in the Steubenville-Weirton metro market, 33.6% was in the Wheeling metro market and 25.2% was in areas outside any metro market. The staff accepted Associated's county-by-county showing of a weighted audience share of 11.1% because "a majority of this overlap does not exist over any single metro market." In re: WOMP(AM)/WOMP-FM, DA 92-1744, dated December 30, 1992.

7. Thus, in two communities that are ranked by Arbitron

and whose populations appear to be no greater than Jonesboro's, Associated was permitted to own two AM and two FM stations, despite opposition,[2] through a technicality -- namely, that a majority of the overlap did not cover any single metro market. Because of this technicality, the applicant was able to employ county-by-county weighing. This process allowed the factoring in of the entire populations of several highly populated counties that were barely touched by the contours of the stations in question.

8. Other examples of the inequities produced by the existing rules are also evident. Larger "rated" markets use the county audiences included in the Total Survey Area, while "unrated" smaller markets are restricted to using county survey figures for only counties within the duopoly principal community contours. For instance, Little Rock duopoly shares are based on a forty-county survey area while Duke's acquisition in Jonesboro, Arkansas was restricted to only ten counties within the principal community contours. Had an equitable geographic survey area been allowed for Jonesboro, Duke's three stations would not have reached the twenty-five percent share cap. The Bismarck, North Dakota situation discussed in NAB's Petition is yet another example of the inequities that the revised radio ownership rules cause in smaller markets.

9. Today, new radio stations have been allocated to communities throughout the country which provide unlimited

---

[2] Duke's application was unopposed and was supported by numerous community leaders and organizations.

listener choices. Citizens also may choose other services from TV, cable and local newspapers that prove most overconcentration concerns unwarranted. Jonesboro, Arkansas, has seven commercial radio stations, one non-commercial radio station, a VHF television station, a daily newspaper and a weekly newspaper. Any abuse of concentration would more likely result in citizen loyalty and advertiser support moving to competing information and entertainment media. As Inside Radio reported on February 1, 1994, a just-completed breakout by M Street Journal may allay the FCC's fears of monopoly because it shows that duopolies and LMAs are spread about evenly through Arbitron rated markets and "in 'non-markets', just 3.7% of stations are duopolized, and a minuscule 1.8% are in LMAs." By accepting NAB's recommended changes in the current duopoly rules, the Commission will allow more experienced and financially capable owners to extend higher quality broadcast services to local residents.

10. In its MO&O, the Commission recognized that "the radio industry is in dire need of regulatory relief." 7 FCC Rcd at 6402. The Commission also stressed that its annual review of the radio marketplace "should provide guidance in measuring the impact of these rule changes on small stations." 7 FCC Rcd at 6394. Duke respectfully requests the Commission to carefully examine the impact of its revised rules on markets such as Jonesboro, Arkansas and to adopt revisions which would operate more equitably and/or provide greater relief through a waiver system.

Respectfully submitted,

DUKE RADIO BROADCASTING, INC.
and
DUKE BROADCASTING CORPORATION

By: Larry A. Duke

Larry A. Duke
President
407 West Parker
Jonesboro, AR 72403
(501) 932-8400

CERTIFICATE OF SERVICE

I, LARRY A. DUKE, do hereby certify that I have this 9th day of February 1994, mailed by first class United States mail, postage prepaid, copies of the foregoing "**COMMENTS ON PETITION FOR RULE MAKING**" to the following:

Roy J. Stewart, Esq.
Chief, Mass Media Bureau
Federal Communications Commission
1919 M Street, N.W.
Room 342
Washington, D.C. 20554

Henry L. Baumann, Esq.
Barry D. Umansky, Esq.
National Association of Broadcasters
1771 N Street, N.W.
Washington, D.C. 20036

Larry A. Duke

Larry A. Duke